

MEMORANDUM

February 27, 2004

TO: County Council

FROM: Sonya E. Healy, ^{SEH}Legislative Analyst

SUBJECT: **Introduction:** Bill 3-04, Procurement – Use of County Funds

Councilmembers Knapp, Denis, Floreen, and Leventhal intend to introduce Bill 3-04, Procurement – Use of County Funds on March 2. A public hearing is tentatively scheduled for March 23 at 1:30 p.m.

Bill 3-04 would prohibit County funds appropriated for contract services or grant awards from being encumbered or used to assist, promote, or deter union activity or organizing.

This packet contains:

Bill 3-04

Legislative Request Report

Circle #

1-3

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Bill No. 3-04
Concerning: Procurement—Use of
County Funds
Revised: 3/27/04 Draft No. 1
Introduced: March 2, 2004
Expires: September 2, 2005
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Knapp, Denis, Floreen, and Leventhal

AN ACT to:

- (1) prohibit the use of County Government funds appropriated for a contract for services or a grant award from being used to assist, promote, or deter union activity or organizing;
- (2) provide exceptions for certain contractors, grantees, and activities;
- (3) require a contractor or grantee to affirm that County funds will not be used to assist, promote, or deter union activity or organizing;
- (4) require a contractor or grantee to maintain certain records;
- (5) provide enforcement and penalty provisions; and
- (6) generally amend the law governing procurement.

By adding:

Montgomery County Code
Chapter 11B, Contracts and Procurement
Section 11B-33B

Boldface

Heading or defined term.

Underlining

Added to existing law by original bill.

[Single boldface brackets]

Deleted from existing law by original bill.

Double underlining

Added by amendment.

[[Double boldface brackets]]

Deleted from existing law or the bill by amendment.

* * *

Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:

Section 11B-33B is added as follows:

11B-33B. Use of County Funds.

- (a) Use of Funds. County funds appropriated for a contract for services or a grant award must not be encumbered or used to assist, promote, or deter union activity or organizing. Nothing in this Section shall be construed to prohibit the expenditure of County funds appropriated for a contract for services or a grant award on the negotiation or administration of a collective bargaining agreement.
- (b) Exceptions to Coverage. This Section does not apply to a contractor or grantee, who at the time a contract is signed, has received less than \$50,000 from the County in a 12-month period.
- (c) Specific Restrictions. County funds must not be used to:
- (1) prepare, mail, or otherwise distribute materials related to union activity or organizing;
 - (2) hire an attorney or a consultant to assist, promote, or deter union activity or organizing;
 - (3) encourage or discourage an employee from taking a position on union organizing in the workplace;
 - (4) prevent a labor organization or its representatives from accessing an employer's facilities or property;
 - (5) encourage or discourage a program manager, policy council, committee, or community or parent group from assisting or participating in a union activity or organizing.
- (d) Enforcement.
- (1) The Chief Administrative Officer must require each contractor or grantee to:
 - (A) Certify that the contractor or grantee will not expend County funds

to assist, promote, or deter union activity or organizing and will
comply with the requirements of this Section.

(B) Keep and submit any records necessary to show compliance. A
contractor or grantee must provide these records upon request.
These records must be made available to the public at a reasonable
time.

(2) The Chief Administrative Officer must enforce this Section and
investigate any complaint of a violation.

(e) Penalty. A contractor or grantee must pay the County the amount of funds
expended in violation of this Section, and a reasonable attorney's fee.

Approved:

Steven A. Silverman, President, County Council

Date

Approved:

Douglas M. Duncan, County Executive

Date

This is a correct copy of Council action.

Mary A. Edgar, CMC, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Bill 3-04

Procurement—Use of County Funds

DESCRIPTION:	Bill 3-04 adds Section 11-B-33B to the Procurement Law to prohibit the use of County Government funding appropriated for contract services or grant awards from being used to assist, promote, or deter union activity or organizing.
PROBLEM:	There is no prohibition against using County Government funding awarded to contractors or grantees from being used to prohibit union activity or organizing. The potential exists for County Government funding, which is intended to perform essential services, to be reduced by money spent on anti-union campaigns.
GOALS AND OBJECTIVES:	The goal of this bill is to ensure that County Government funding is used for its intended purpose, instead of being diverted to promote or discourage union organizing activities. This bill is intended to protect employee rights, to balance the concerns of management and unions, and to maintain a level playing field for unions seeking to organize.
COORDINATION:	The Office of Procurement.
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	California, Florida, Maine, and New York have similar laws. California's Union Neutral Law was successfully challenged in federal court on First Amendment grounds and on the grounds that the law is preempted by the National Labor Relations Act (NLRA). This case is on appeal. Industry groups have also filed suit challenging the New York law based on the California case.
SOURCE OF INFORMATION:	Sonya E. Healy, Legislative Analyst, Office of the County Council, 240-777-7970
APPLICATION WITHIN MUNICIPALITIES:	Applies in Brookville, Chevy Chase View, Chevy Chase Section 5, Friendship Heights, Village of North Chevy Chase, and City of Takoma Park.
PENALTIES:	Contractors and grantees are required to repay the County the amount of funds expended in violation of the bill and pay a reasonable attorney's fee.